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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/018,412	12/13/2001	Martin Hildebrand	ZAHFRI P393US	1202

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EXAMINER

HO, HA DINH

ART UNIT PAPER NUMBER

3681

DATE MAILED: 08/25/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/018,412

Applicant(s)

HILDEBRAND ET AL.

Examiner

Ha D. Ho

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 June 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 8-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 8-20 is/are rejected.
- 7) ☒ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 December 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input checked="" type="checkbox"/> Other: <i>Exhibit A</i> . |

DETAILED ACTION

1. This Office Action is responsive to The Amendment filed on 6/17/03. Claims 8, 9 and 12 have been amended, and new claims 14-20 have been added accordingly. Claims 8-20 are currently pending.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the limitations of “*elastic damping element (5) situated only in the area in which the interconnected hydraulic pump (1) and the separate hydraulic motor (3) are connected with one another and with said transmission housing (7)*” recited in claims 1 and 20, and the limitations of “*elastic damping elements (5) are provided only at the connection point for joining the coaxially connected hydraulic pump (1) and hydraulic motor (3) with the transmission housing (7)*” recited in claim 14 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered. Note that the drawings show the pump (1) connected with the motor (3) at the area (A) (see Exhibit A) via the plate (2), and the plate (2) connected with the transmission housing (7) at the area (B). There is no area of mutual connection between the pump, motor and transmission housing shown.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

3. Claims 8-20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Since the area of mutual connection between the pump, motor and transmission housing is not described/shown (see paragraph 2 above), it is unclear as to how one skilled in the art enable to make a mutual connection area between the pump, motor and transmission housing to situate the elastic damping element. For the purpose of applying art to the claims, it is assumed that the pump and motor connected together via a plate, and the plate connected to the transmission housing via the elastic damping element.

Double Patenting

4. Claim 20 is objected to under 37 CFR 1.75 as being a substantial duplicate of claims 8 and 12. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 8, 10, 11 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Nakamura et al. (US 5,295,414).

Nakamura et al'414 teaches a power distribution transmission (see Figs. 2-5) having a hydraulic pump (i.e., the pump having the shaft 17) and a hydraulic motor (i.e., the motor having the shaft 20) connected to a transmission housing (3) via a plate (12) and elastic damping elements (150), the hydraulic pump and motor communicate with mechanical power branch via shafts (18, 21) which are floatingly supported (i.e., by means of the ball joints 22), wherein the shafts (18, 21) have crowned teeth (see Fig. 4). Regarding claims 10, 11 and 13, Nakamura et al'414 shows the intermediate plate (12) having receptacles (15) radially disposed around an axis of rotation of the pump, and the damping elements (150) being situated in one plane (see Fig. 3).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 8, 9, 14-17 and 19, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Bolinger et al. (US 4,111,003) in view of Lehle et al. (US 6,042,496).

Regarding claims 8 and 14, Bolinger et al'003 teaches a power distribution transmission having a hydraulic pump (30) co-axially connected to a hydraulic motor (31) via a plate (32, 25, 26) which is connected to a transmission housing (12) via elastic damping elements (80), the

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hydraulic pump and motor (30, 31) communicate with mechanical power branch via shafts (51, 53), wherein the shafts (51, 53) have crowned teeth (i.e., gears 52, 54). Bolinger et al'003 does not show the shafts (51, 53) being floatingly supported. Lehle et al'496 shows a similar power distribution transmission having hydraulic pump motor (4, 6) communicating with mechanical power branch via shafts (3, 7). Lehle et al'496 further discloses that the shaft (3) is floatingly supported for axial-play compensating (col. 2, lines 25-27). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the power distribution transmission of Bolinger et al'003 such that the shafts (51, 53) are floatingly supported in view of Lehle et al'496 in order to provide axial-play compensating (col. 2, lines 25-27). Regarding claims 9 and 15, Bolinger et al'003 shows toothed wheels (63, 70), which are connected via shafts (51, 53) with the hydraulic pump and motor (30, 31), being supported by bearing (61, 62, 72, 73). Regarding claims 16, 17 and 19, Bolinger et al'003 shows the intermediate plate (32, 25, 26) having receptacles (i.e., the holes on the plate 26 for inserting bolts 88) radially disposed around an axis of rotation of the pump (30), and wherein the damping elements (80) are situated in one plane.

Response to Arguments

9. Applicant's arguments filed on 6/17/03 have been fully considered but they are not persuasive.

Regarding argument on page 5, third paragraph, applicant states that "Nakamura et al'414 does not coaxially align the pump and motor". It is noted that the features upon which applicant relies are not recited in the rejected claims 8, 10, 11 and 13. Although the claims are interpreted

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in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Regarding argument from the last line on page 5 to line 9 on page 6, and lines 5-11 on page 7, please see the paragraphs 2 and 3 above.

Regarding argument from line 13 on page 6 to line 4 on page 7, and lines 12-15 on page 7, note that even the *Lehle et al*'496 has nothing to do with the noise attenuation, however, the suggestion of floatingly mounting of a shaft in the hydrostatic-mechanical transmission, which is similar to the hydrostatic-mechanical transmission of *Bolinger et al*'003, is discussed in order to compensate the axial-play of the connecting shaft (see col. 2, lines 25-27).

Lastly, the prior arts are applied as to the best understanding according to the assumption made in paragraph 3 above.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Communication

Submission of your response by facsimile transmission is encouraged. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9326 for regular communications and (703) 872-9327 for After Final communications. Recognizing the fact that reducing cycle time in the processing and examination of patent applications will effectively increase a patent's term, it is to your benefit to submit responses by facsimile transmission whenever permissible. Such submission will place the response directly in our examining group's hands and will eliminate Post Office processing and delivery time as well as the PTO's mail room processing and delivery time. For a complete list of correspondence not permitted by facsimile transmission, see M.P.E.P. 502.01. In general, most responses and/or amendments not requiring a fee, as well as those requiring a fee but charging such fee to a deposit account, can be submitted by facsimile transmission. Responses requiring a fee which applicant is paying by check should not be submitting by facsimile transmission separately from the check. Responses submitted by facsimile transmission should include a Certificate of Transmission (M.P.E.P. 512). The following is an example of the format the certification might take:

I hereby certify that this correspondence is being facsimile transmitted to
the Patent and Trademark Office on _____

(Date)

Typed or printed name of person signing this certificate:

(Signature)

If your response is submitted by facsimile transmission, you are hereby reminded that the original should be retained as evidence of authenticity (37 CFR 1.4 and M.P.E.P. 502.02). Please do not separately mail the original or another copy unless required by the Patent and Trademark Office. Submission of the original response or a follow-up copy of the response after your response has been transmitted by facsimile will only cause further unnecessary delays in the processing of your application; duplicate responses where fees are charged to a deposit account may result in those fees being charged twice.

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Examiner Ho whose telephone number is (703) 305-0738. The examiner can normally be reached on Monday-Friday from 7:30 A.M. to 5:00 P.M. Eastern Standard Time. If attempts to reach the examiner by phone are unsuccessful, the examiner's supervisor,

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Mr. Charles Marmor, can be reached at (703) 308-0830. Any inquiry of a general nature or relating to the status of this application or proceeding should directed to the Group receptionist whose telephone number is (703) 308-2168.

Ha Ho 8/21/03

Ha Ho
Patent Examiner
Art Unit 3681

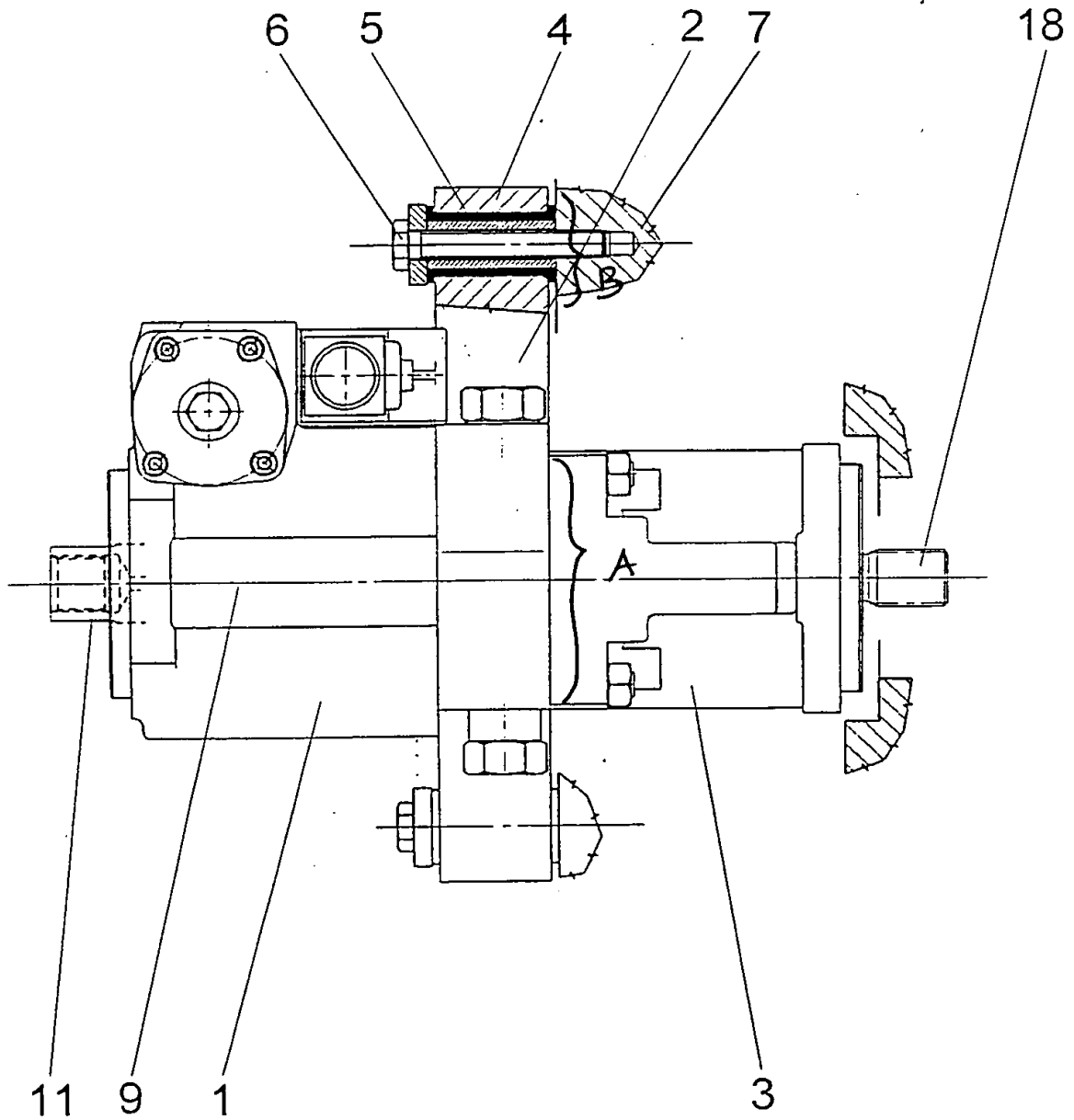


EXHIBIT A

Fig. 1